

**APPROVED JURISDICTIONAL DETERMINATION FORM**  
**U.S. Army Corps of Engineers**

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

**SECTION I: BACKGROUND INFORMATION**

**A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): July 10, 2019**

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Detroit District, Michiana Branch, Dunton Road Reconstruction JD, LRE-2019-00087-102-J19**

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

State: Indiana County/parish/borough: Allen City: Fort Wayne  
Center coordinates of site (lat/long in degree decimal format): Lat. 41.215804° **N**, Long. -85.152494° **W**.  
Universal Transverse Mercator: 16

Name of nearest waterbody: Willow Creek Branch #7

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Maumee River

Name of watershed or Hydrologic Unit Code (HUC): Cedar Creek Watershed; HUC-10: 0410000307

- Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.  
 Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

**D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):**

- Office (Desk) Determination. Date: February 01, 2019 and June 07, 2019  
 Field Determination. Date(s): June 28, 2019

**SECTION II: SUMMARY OF FINDINGS**

**A. RHA SECTION 10 DETERMINATION OF JURISDICTION.**

There **are no** "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

- Waters subject to the ebb and flow of the tide.  
 Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.  
Explain: .

**B. CWA SECTION 404 DETERMINATION OF JURISDICTION.**

There **are and are not** "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

**1. Waters of the U.S.**

**a. Indicate presence of waters of U.S. in review area (check all that apply):<sup>1</sup>**

- TNWs, including territorial seas  
 Wetlands adjacent to TNWs  
 Relatively permanent waters<sup>2</sup> (RPWs) that flow directly or indirectly into TNWs  
 Non-RPWs that flow directly or indirectly into TNWs  
 Wetlands directly abutting RPWs that flow directly or indirectly into TNWs  
 Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs  
 Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs  
 Impoundments of jurisdictional waters  
 Isolated (interstate or intrastate) waters, including isolated wetlands

**b. Identify (estimate) size of waters of the U.S. in the review area:**

Non-wetland waters: 432 linear feet: 12+/- width (ft) and/or N/A acres.  
Wetlands: 4.03 acres.

**c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual**

Elevation of established OHWM (if known): N/A.

**2. Non-regulated waters/wetlands (check if applicable):<sup>3</sup>**

- Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.  
Explain: **The consultant identified 14 potentially jurisdictional features within the review area; two were determined to**

<sup>1</sup> Boxes checked below shall be supported by completing the appropriate sections in Section III below.

<sup>2</sup> For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

<sup>3</sup> Supporting documentation is presented in Section III.F.

be non-regulated waters/wetlands. The Wetland Delineation Report (Report) identified an excavated pond approximately 0.14 acres in size within the review area east of Dunton Road. The pond is located approximately 6' – 8' above grade of the surrounding area. No outlets from the pond to downstream Waters of the United States were observed. The NRCS Web Soil Survey maps the area in which the pond was excavated as Blount silt loam, which is not listed as a hydric soil for Allen County. The pond appeared to be an artificially constructed pond created in upland and would not be considered a Water of the United States per 33 CFR 328.3(b). The Report also identified a forested wetland, Section IX, approximately 0.23 acres in size immediately north of the entrance to Payton Park along the east side of Dunton Road. Review of the applicable USGS Topographic maps, USGS NHD maps, aerial imagery, and the Allen County iMap GIS Engineering Viewer did not indicate the presence of a potential flow path or other potential surface or subsurface hydrologic connection from Section IX to a downstream Water of the United States; this was confirmed during the site inspection. Wetland Section IX was not separated by a berm or other man-made structure from a surface water, does not provide for interstate or foreign commerce, is not subject to commercial use currently, and will not likely to be subject to commercial use in the future. In addition, there does not appear to be evidence that suggests that the wetland support recreational use and no direct evidence was observed of known species that require the wetland to fulfill their life cycle requirements.

**SECTION III: CWA ANALYSIS**

**A. TNWs AND WETLANDS ADJACENT TO TNWs**

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

**1. TNW**

Identify TNW: .

Summarize rationale supporting determination: .

**2. Wetland adjacent to TNW**

Summarize rationale supporting conclusion that wetland is “adjacent”:

**B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):**

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are “relatively permanent waters” (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody<sup>4</sup> is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

**1. Characteristics of non-TNWs that flow directly or indirectly into TNW**

**(i) General Area Conditions:**

Watershed size: **Pick List**

Drainage area: **Pick List**

Average annual rainfall: inches

Average annual snowfall: inches

**(ii) Physical Characteristics:**

**(a) Relationship with TNW:**

Tributary flows directly into TNW.

Tributary flows through **Pick List** tributaries before entering TNW.

Project waters are **Pick List** river miles from TNW.

Project waters are **Pick List** river miles from RPW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Project waters are **Pick List** aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain: .

Identify flow route to TNW<sup>5</sup>: .

Tributary stream order, if known: .

<sup>4</sup> Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

<sup>5</sup> Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

(b) General Tributary Characteristics (check all that apply):

Tributary is:  Natural  
 Artificial (man-made). Explain: .  
 Manipulated (man-altered). Explain: .

Tributary properties with respect to top of bank (estimate):

Average width: feet  
Average depth: feet  
Average side slopes: **Pick List**.

Primary tributary substrate composition (check all that apply):

Silts  Sands  Concrete  
 Cobbles  Gravel  Muck  
 Bedrock  Vegetation. Type/% cover:  
 Other. Explain: .

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: .

Presence of run/riffle/pool complexes. Explain: .

Tributary geometry: **Pick List**

Tributary gradient (approximate average slope): %

(c) Flow:

Tributary provides for: **Pick List**

Estimate average number of flow events in review area/year: **Pick List**

Describe flow regime: .

Other information on duration and volume: .

Surface flow is: **Pick List**. Characteristics: .

Subsurface flow: **Pick List**. Explain findings: .

Dye (or other) test performed: .

Tributary has (check all that apply):

Bed and banks  
 OHWM<sup>6</sup> (check all indicators that apply):  
 clear, natural line impressed on the bank  the presence of litter and debris  
 changes in the character of soil  destruction of terrestrial vegetation  
 shelving  the presence of wrack line  
 vegetation matted down, bent, or absent  sediment sorting  
 leaf litter disturbed or washed away  scour  
 sediment deposition  multiple observed or predicted flow events  
 water staining  abrupt change in plant community  
 other (list):  
 Discontinuous OHWM.<sup>7</sup> Explain: .

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

High Tide Line indicated by:  Mean High Water Mark indicated by:  
 oil or scum line along shore objects  survey to available datum;  
 fine shell or debris deposits (foreshore)  physical markings;  
 physical markings/characteristics  vegetation lines/changes in vegetation types.  
 tidal gauges  
 other (list):

(iii) **Chemical Characteristics:**

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain: .

Identify specific pollutants, if known: .

<sup>6</sup>A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

<sup>7</sup>Ibid.

(iv) **Biological Characteristics. Channel supports (check all that apply):**

- Riparian corridor. Characteristics (type, average width):
- Wetland fringe. Characteristics:
- Habitat for:
  - Federally Listed species. Explain findings:
  - Fish/spawn areas. Explain findings:
  - Other environmentally-sensitive species. Explain findings:
  - Aquatic/wildlife diversity. Explain findings:

2. **Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

(i) **Physical Characteristics:**

(a) General Wetland Characteristics:

Properties:

Wetland size: 2.5 acres

Wetland type. Explain: Wetlands, Section IIA/IIB, Section IIIA/IIIB, and Section IVA/IVB/IVC, identified within the review area, include emergent, scrub-shrub, and forested components.

Wetland quality. Explain: Emergent components of the wetlands noted above could be classified as fairly low quality wetlands dominated primarily by *Phalaris arundinacea* and do not support much species diversity. Forested and scrub-shrub components of the wetlands noted above could be classified as moderate to high quality wetlands dominated by a number of different mature tree species (*Quercus pulustris*, *Populus deltoides*, *Ulmus rubra*, and *Salix interior*) and shrub species (*Cornus amomum*, *Cephalanthus occidentalis*, and *Salix interior*). Species diversity of the herbaceous stratum was also notably higher in the forested and scrub-shrub components of these wetlands.

Project wetlands cross or serve as state boundaries. Explain: N/A.

(b) General Flow Relationship with Non-TNW:

Flow is: **Intermittent flow**. Explain: Hydrology for the wetlands located within the review area is driven by precipitation, upland runoff, and a seasonally high water table.

Surface flow is: **Discrete and confined**

Characteristics: Wetlands, Section IIA/IIB, Section IIIA/IIIB, and Section IVA/IVB/IVC, as described in the Report, all possess a hydrologic connection to the subsurface tile, Goodearth Tile (20190628\_0004.jpg, 20190628\_0007.jpg, 20190628\_0008.jpg, 20190628\_0014.jpg, 20190628\_0018.jpg, 20190628\_0019.jpg, 20190628\_0020.jpg). Review of the Allen County iMap GIS Engineering Viewer suggests that once the subsurface tile exits the review area to the west at 14201 Dunton Road, Goodearth Tile continues to flow approximately 1,500 feet southwest before discharging into Willow Creek Branch #7. The United States Geological Survey's National Hydrography Dataset (NHD) further corroborates these findings by depicting the subsurface tile as a perennial stream following the same flow path as that of Goodearth Tile.

Subsurface flow: **Yes**. Explain findings: The Allen County iMap GIS Engineering Viewer indicates a subsurface tile named Goodearth Tile running approximately 2,025 feet south beneath the agriculture fields east of Dunton Road and then southwest approximately 2,316 feet before discharging into Willow Creek Branch #7 (RPW). The Goodearth Tile conveys water from Wetlands, Section IIA/IIB, Section IIIA/IIIB, and Section IVA/IVB/IVC, to Willow Creek Branch #7. The flow path then aligns with the flow path of Willow Creek Branch #7 (Section VII in the Report) described in Section III.C.3 and Section III.D.2 of this Jurisdictional Determination.

Dye (or other) test performed: N/A.

(c) Wetland Adjacency Determination with Non-TNW:

- Directly abutting
- Not directly abutting
  - Discrete wetland hydrologic connection. Explain: See explanation of hydrologic connection above.
  - Ecological connection. Explain:
  - Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW

Project wetlands are **25-30** river miles from TNW.

Project waters are **5-10** aerial (straight) miles from TNW.

Flow is from: **Wetland to navigable waters**.

Estimate approximate location of wetland as within the **500-year or greater** floodplain.

(ii) **Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: At the time of the site inspection, Wetlands, Section IIA/IIB, Section IIIA/IIIB and Section IVA/IVB/IVC, all held some amount of standing water. The water was a muddy brown in some areas and clear in others. The larger emergent components of the wetlands located along the east side of Dunton Road possessed more turbid waters consistent with runoff from the agriculture fields that surround them. Forested wetlands located within the review area possessed more clear water. The wetlands are located in an agricultural/residential area and provide for

sequestration of pesticides, nutrients, and sediments found in agricultural and residential runoff. The wetlands noted above also provide flood water attenuation and E. coli retention.

Identify specific pollutants, if known: N/A.

**(iii) Biological Characteristics. Wetland supports (check all that apply):**

Riparian buffer. Characteristics (type, average width): .

Vegetation type/percent cover. Explain: .

Habitat for:

Federally Listed species. Explain findings: .

Fish/spawn areas. Explain findings: .

Other environmentally-sensitive species. Explain findings: .

Aquatic/wildlife diversity. Explain findings: The wetlands provide some measure of foraging habitat as well as cover

for small mammals. Waterfowl and migratory birds may also use the wetlands for resting, feeding, or as breeding or nesting grounds for part of the year.

**3. Characteristics of all wetlands adjacent to the tributary (if any)**

All wetland(s) being considered in the cumulative analysis: **8**

Approximately ( 77.06 ) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
Yes	22.92	No	8.74
Yes	2.88	No	18.30
Yes	3.52	No	0.66
No	0.38	Yes	19.66

Summarize overall biological, chemical and physical functions being performed: These wetlands provide some ability to help trap sediment, nutrients, bacteria, pesticides and other toxins, and help to retain flood waters before reaching Willow Creek Branch #7, Willow Creek Ditch, Willow Creek, Cedar Creek, the St. Joseph River, the Maumee River (Section 10 TNW), and eventually Lake Erie.

### C. SIGNIFICANT NEXUS DETERMINATION

**A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.**

**Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:**

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

**Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:**

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: Wetlands, Section IIA/IIB, Section IIIA/IIIB, and Section IVA/IVB/IVC, as described in the Report, all possess a hydrologic connection to the subsurface tile, Goodearth Tile (20190628\_0004.jpg, 20190628\_0007.jpg, 20190628\_0008.jpg, 20190628\_0014.jpg, 20190628\_0018.jpg, 20190628\_0019.jpg, 20190628\_0020.jpg). Review of the Allen County iMap GIS Engineering Viewer suggests that once the subsurface tile exits the review area to the west at 14201 Dunton Road, Goodearth Tile continues to flow approximately 1,500 feet southwest before discharging into Willow Creek Branch #7. The United States Geological Survey's National Hydrography Dataset (NHD) further corroborates these findings by depicting the subsurface tile as a perennial stream following the same flow path as that of Goodearth Tile. Willow Creek Branch #7, identified as Section VII in the Report, is a perennial RPW that exhibits an Ordinary High Water Mark, a defined bed and bank, and flows approximately 432 linear feet west through the review area. The RPW is depicted as a both a canal/ditch and perennial stream on the United States Geological Survey's NHD. The United States Fish and Wildlife Survey's National Wetland Inventory (NWI) maps Willow Creek Branch #7 as an R5 Unknown Perennial stream feature. Using the Allen County iMap GIS Engineering Viewer, the following flow path was identified outside of the review area; Willow Creek Branch #7 flows west approximately 2.64 miles to its confluence with Willow Creek Branch #6. Willow Creek Branch #7 then continues to flow north approximately 0.62 miles to its confluence with Willow Creek Main Drain (Willow Creek Ditch), approximately 1,262 feet west of the corner of Malcolm Road and Hunter Road. Willow Creek Ditch flows northeast approximately 2.1 miles to its confluence with Willow Creek. Willow Creek flows northeast

approximately 1.51 miles to its confluence with Cedar Creek. Cedar Creek proceeds to flow southeast approximately 7.75 miles to its confluence with the St. Joseph River. The St. Joseph River flows south southwest approximately 13.69 miles to its confluence with the St. Mary's River to form the Maumee River (Section 10 TNW). The Maumee River flows approximately 137 miles northeast and discharges into Lake Erie. The subject wetlands are located within the HUC-10 boundary of the Cedar Creek Watershed and the larger HUC-8 boundary of the St. Joseph River Watershed. Both of these St. Joseph River watersheds are located upstream of the St. Joseph River's confluence with the St. Mary's River and include highly developed residential/commercial areas of Fort Wayne and its suburbs, as well as agriculture lands in northern Allen County, eastern Noble County, and DeKalb County. These watersheds have the greatest impact on the quality of Fort Wayne's source water, both by virtue of their proximity to the City and by the volume of water carried by the streams and the river. The Cedar Creek Watershed Management Plan (2005) notes that the lower 13.7 miles of Cedar Creek, from DeKalb County Road 68 downstream to the confluence with the St. Joseph River in Cedarville, is designated as an Outstanding State Resource Water. A Natural, Scenic, and Recreational Rivers Study of Cedar Creek, was conducted by the Indiana Department of Natural Resources in 1975 and found that Cedar Creek, from river mile 13.7 downstream to the confluence with the St. Joseph River, "possesses outstanding natural, scenic, and recreational characteristics and that this segment of river should be set aside and preserved for the benefit of present and future generations". The designation of this stretch of Cedar Creek as an Outstanding State Resource Water requires that the waters of the stream, "be maintained at their present high quality without degradation". E. coli contamination, pesticide and nutrient runoff, erosion and sediment loading, urban sprawl and unregulated development, and loss and filling of wetlands have been identified as problems and stressors to Cedar Creek (Cedar Creek Watershed Management Plan, 2005). Wetlands, Section IIA/IIB, Section IIIA/IIIB, and Section IVA/IVB/IVC are located within the right-of-way (ROW) of Dunton Road. The ROW of Dunton Road contains a variety of land uses including agriculture, single family residential development, undeveloped forested components, and a County park; use of which do contribute to the problems and stressors identified in the Cedar Creek Watershed Management Plan (2005). The wetlands described above help trap sediment, nutrients, bacteria, pesticides and other toxins, recharge groundwater systems, as well as to help retain flood waters before reaching Willow Creek Branch #7, Willow Creek Ditch, Willow Creek, Cedar Creek, the St. Joseph River, the Maumee River (Section 10 TNW), and eventually Lake Erie. As noted above, Willow Creek Branch #7 (RPW) is part of the St. Joseph River Watershed, HUC-8: 04100003. The St. Joseph River Watershed Management Plan (2006) states that nonpoint source pollution makes up 75% of the water pollution in the St. Joseph River. The report cited that the sources of the nonpoint source pollution include agricultural fields, transportation corridors and urban streets, yards, building roofs, parks, golf courses, and parking lots; all of which are located within the watersheds observed within the review area. With the knowledge that the St. Joseph River joins the St. Mary's to form the Maumee River, continued degradation of wetlands situated within the St. Joseph River watershed in and around Fort Wayne will have a demonstrable effect on the water quality of the Maumee River and ultimately Lake Erie. Most of the wetlands in the Maumee River watershed in Indiana are relatively small and exist as fragments or relic portions of the Great Black Swamp, which stretched from Fort Wayne, Indiana to Toledo, Ohio and was subjected to massive drainage projects in the 1800's. The drainage work facilitated the pervasive conversion of the landscape to agricultural land. Prior to drainage efforts, the Maumee River's watershed was predominantly one large forested wetland complex with interspersed marshes. The ditches that drained the Great Black Swamp are conduits for fast drainage and provide little flood retention and little ability to filter/retain pollutants. This has led to the Maumee River being flood prone, nutrient and pollutant rich, and has resulted in the construction of a large scale Corps flood control project located in Fort Wayne, Indiana (Rep. Mark Souder, IN, requested \$5.3 million in additional funding for additional Corps flood control work in the 2007 WRDA). Impacts to the remaining waters and wetlands in the upper Maumee River's watershed, especially in the Fort Wayne area, will serve to reduce the effectiveness of the existing, as well as future, Corps flood control projects in Fort Wayne. The lower reaches of the Maumee River (in Ohio) have been designated a Great Lakes Area of Concern (AOC) and are subject to a Remedial Action Plan (RAP). In an effort to clean up the most polluted areas in the Great Lakes, the United States and Canada, in Annex 2 of the Great Lakes Water Quality Agreement, committed to cooperate with State and Provincial Governments to ensure that RAPs are developed and implemented for all designated AOCs in the Great Lakes basin. Limiting pollutants of any type in the upstream reaches of the Maumee River, which includes the St. Joseph River Watershed, assists in the realization of the goals of the RAP for the Maumee River AOC. Wetlands, Section IIA/IIB, Section IIIA/IIIB, and Section IVA/IVB/IVC, can provide some measure of flood water retention by slowing downstream flow during high flow events and will help limit the pollutant/nutrient load to the St. Joseph River, the Maumee River, and Lake Erie. The remaining waters and wetlands in the St. Joseph River watershed, including the subject wetlands, play a significant role in mitigating effects on the biological, chemical, and physical integrity of Cedar Creek, the St. Joseph River, the Maumee River, and Lake Erie.

**D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):**

**1. TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:

- TNWs: linear feet width (ft), Or, acres.  
 Wetlands adjacent to TNWs: acres.

**2. RPWs that flow directly or indirectly into TNWs.**

- Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: Willow Creek Branch #7, identified as Section VII in the Report, is a perennial RPW that exhibits an Ordinary High Water Mark (OHWM), a defined bed and bank, and flows approximately 432 linear feet west through the review area. The presence of an OHWM and a defined bed and bank were observed during the June 28, 2019, site inspection. The RPW is depicted as a both a canal/ditch and perennial stream on the United States Geological Survey's National Hydrography Dataset (NHD), as well as a stream feature on the NRCS Web Soil Survey for Allen County. The United States



Fish and Wildlife Survey's National Wetland Inventory (NWI) maps Willow Creek Branch #7 as an R5 Unknown Perennial stream feature. Beyond the review area, Willow Creek Branch #7 flows west approximately 2.64 miles to its confluence with Willow Creek Branch #6. Willow Creek Branch #7 then continues to flow north approximately 0.62 miles to its confluence with Willow Creek Main Drain (Willow Creek Ditch) approximately 1,262 feet west of the corner of Malcolm Road and Hunter Road. Willow Creek Ditch flows northeast approximately 2.1 miles to its confluence with Willow Creek. Willow Creek flows northeast approximately 1.51 miles to its confluence with Cedar Creek. Cedar Creek proceeds to flow southeast approximately 7.75 miles to its confluence with the St. Joseph River. The St. Joseph River flows south southwest approximately 13.69 miles to its confluence with the St. Mary's River to form the Maumee River (Section 10 TNW).

Based upon review of leaf-off aerial imagery, the USGS NHD, and the Allen County iMap GIS Engineering Viewer, Wetland Section I directly abuts Anson Duntun ditch (RPW) west of the review area. The Anson Duntun ditch is depicted as a perennial stream on the USGS NHD and is labelled as an Allen County Regulated Drain on the Allen County iMap GIS Engineering Viewer. The Anson Duntun ditch flows west approximately 1.24 miles to its confluence with Willow Creek Branch #7. The flow path then aligns with the flow path of Willow Creek Branch #7 (Section VII in the Report) described above.

- Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: .

Provide estimates for jurisdictional waters in the review area (check all that apply):

Tributary waters: **432** linear feet **12**+/- width (ft).

Other non-wetland waters: . acres.

Identify type(s) of waters: .

**3. Non-RPWs<sup>8</sup> that flow directly or indirectly into TNWs.**

- Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

Tributary waters: . linear feet . width (ft).

Other non-wetland waters: . acres.

Identify type(s) of waters: .

**4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**

- Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
  - Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: **Based upon the June 28, 2019, site inspection and review of applicable resources, Wetland Section I directly abuts Anson Duntun ditch (RPW) west of the review area. Wetlands, Section V/VI and Section VIII, directly abut Willow Creek Branch #7 (Identified as Section VII in the Report) beyond the review area. Therefore, Wetlands, Section I, Section V/VI, and Section VIII directly abut perennial RPWs which flow indirectly into a TNW (Maumee River), and are Waters of the United States.**

- Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

Provide acreage estimates for jurisdictional wetlands in the review area: **1.53** acres.

**5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**

- Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: **2.5** acres.

**6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**

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<sup>8</sup>See Footnote # 3.

- Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: \_\_\_\_\_ acres.

**7. Impoundments of jurisdictional waters.<sup>9</sup>**

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- Demonstrate that impoundment was created from “waters of the U.S.,” or
- Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
- Demonstrate that water is isolated with a nexus to commerce (see E below).

**E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):<sup>10</sup>**

- which are or could be used by interstate or foreign travelers for recreational or other purposes.
- from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- which are or could be used for industrial purposes by industries in interstate commerce.
- Interstate isolated waters. Explain: \_\_\_\_\_
- Other factors. Explain: \_\_\_\_\_

**Identify water body and summarize rationale supporting determination:** \_\_\_\_\_

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: \_\_\_\_\_ linear feet \_\_\_\_\_ width (ft).
- Other non-wetland waters: \_\_\_\_\_ acres.  
Identify type(s) of waters: \_\_\_\_\_
- Wetlands: \_\_\_\_\_ acres.

**F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):**

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
  - Prior to the Jan 2001 Supreme Court decision in “*SWANCC*,” the review area would have been regulated based solely on the “Migratory Bird Rule” (MBR).
- Waters do not meet the “Significant Nexus” standard, where such a finding is required for jurisdiction. Explain: \_\_\_\_\_
- Other: (explain, if not covered above): **The excavated Pond within the review area is an artificially constructed pond created in upland and would not be considered a Water of the United States per 33 CFR 328.3(b).**

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- Non-wetland waters (i.e., rivers, streams): \_\_\_\_\_ linear feet \_\_\_\_\_ width (ft).
- Lakes/ponds: 0.14 acres.
- Other non-wetland waters: \_\_\_\_\_ acres. List type of aquatic resource: \_\_\_\_\_
- Wetlands: 0.23 acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the “Significant Nexus” standard, where such a finding is required for jurisdiction (check all that apply):

- Non-wetland waters (i.e., rivers, streams): \_\_\_\_\_ linear feet, \_\_\_\_\_ width (ft).
- Lakes/ponds: \_\_\_\_\_ acres.
- Other non-wetland waters: \_\_\_\_\_ acres. List type of aquatic resource: \_\_\_\_\_
- Wetlands: \_\_\_\_\_ acres.

**SECTION IV: DATA SOURCES.**

<sup>9</sup> To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

<sup>10</sup> Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

**A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):**

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: "Wetland Delineation Report: Dunton Road Reconstruction" prepared by Earth Source, Inc., on behalf of A&Z Engineering, Inc., dated January 23, 2019.
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  - Office concurs with data sheets/delineation report.
  - Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps:
- Corps navigable waters' study:
- U.S. Geological Survey Hydrologic Atlas: USGS National Hydrography Dataset.
  - USGS NHD data.
  - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000, IN-Huntertown.
- USDA Natural Resources Conservation Service Soil Survey. Citation: NRCS Web Soil Survey, Allen County.
- National wetlands inventory map(s). Cite name: USFWS Online Wetland Mapper (National Wetland Inventory).
- State/Local wetland inventory map(s):
- FEMA/FIRM maps:
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs:  Aerial (Name & Date): Allen County iMap GIS Engineering Viewer, 1938, 1957, 1964, 1972, 1986, 1995, 1999, 2003, 2006, 2008, 2009, 2012, 2015, 2018.  
or  Other (Name & Date): Site Photographs, Appendix B "Site Photographs" of the Wetland Delineation Report, 2018; Site Inspection Photographs, 2019.
- Previous determination(s). File no. and date of response letter:
- Applicable/supporting case law:
- Applicable/supporting scientific literature: "St. Joseph River Watershed Management Plan", Three States, Six Counties, One Watershed, St. Joseph River Watershed Initiative, February 28, 2006 (Funded by the Indiana Department of Environmental Management); "Cedar Creek Watershed Management Plan", St. Joseph River Watershed Initiative, September 09, 2005 (Funded by the Indiana Department of Environmental Management).
- Other information (please specify): Site Inspection Report in Case File, June 28, 2019; Allen County iMap GIS Engineering Viewer used to identify subsurface tile and municipal drains in/near the review area. United States Geological Survey (USGS) StreamStats data used to determine stream characteristics and the area of the drainage basin of Willow Creek Branch #7.

**B. ADDITIONAL COMMENTS TO SUPPORT JD:** The Wetland Delineation Report (Report), labelled/identified wetlands as unique wetlands when separated by Dunton Road or other man-made features such as driveways. 33 CFR 328.3(c) states, "wetlands separated from other waters of the United States by man-made dikes or barriers, natural river berms, beach dunes and the like are "adjacent wetlands"". Man-made Dunton Road traverses the center of the review area north to south and separates four wetlands on the east and west side of the road. A driveway at 14201 Dunton Road separates two wetlands east to west. For the purposes of this Approved Jurisdictional Determination, we have described the separated wetlands as singular wetlands; Section IIA/IIB, Section IIIA/IIIB, Section IVA/IVB/IVC, and Section V/VI. Willow Creek Branch #7, identified as Section VII in the Report, is a perennial RPW that exhibits an Ordinary High Water Mark (OHWM) and a defined bed and bank. The RPW is depicted as a perennial stream on the United States Geological Survey's National Hydrography Dataset (NHD), as well as a stream feature on the NRCS Web Soil Survey for Allen County. The United States Fish and Wildlife Survey's National Wetland Inventory (NWI) maps Willow Creek Branch #7 as an R5 Unknown Perennial stream feature. Therefore, Willow Creek Branch #7 is an RPW within the tributary system of the Maumee River and is a Water of the United States. Wetlands, Section V/VI and Section VIII, as described in the Report, directly abut Willow Creek Branch #7 (RPW) which flows indirectly into a TNW (Maumee River), and are Waters of the United States. Wetland, Section I, as described in the Report, directly abuts Anson Dunten ditch (RPW) outside of our review area which flows indirectly into a TNW (Maumee River), and is a Water of the United States. Wetlands, Section IIA/IIB, Section IIIA/IIIB, and Section IVA/IVB/IVC, all possess a hydrologic connection to the subsurface tile, Goodearth Tile and are therefore wetlands adjacent to a perennial RPW (Willow Creek Branch #7). Based upon review of applicable resources, Wetlands, Section IIA/IIB, Section IIIA/IIIB, and Section IVA/IVB/IVC, all possess a significant nexus to a TNW (Maumee River), and are Waters of the United States.